



OFFICE OF ELECTIONS

LEGAL AD DATE: February 23, 2010

INVITATION FOR BIDS No. IFB-10-001-SW

SEALED BIDS FOR A VOTING EQUIPMENT SYSTEM 2010 SPECIAL ELECTION Department of Accounting and General Services, Office of Elections

WILL BE RECEIVED UP TO AND OPENED AT 12:00 P.M. ON

MARCH 8, 2010

IN THE OFFICE OF ELECTIONS, 802 LEHUA AVENUE, PEARL CITY, HAWAII 96782.
DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO MR. AARON H.
SCHULANER, TELEPHONE (808) 453-8683, FACSIMILE (808) 453-6006, OR E-MAIL
AT ELECTIONS@HAWAII.GOV.

Aaron H. Schulaner
Procurement Officer

Name of Company

☐ Other _____

Federal I.D. No.: _____

Hawaii General Excise Tax License I.D. No.: _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Respectfully submitted:

Date: _____

(x) _____

Authorized (Original) Signature

Telephone No.: _____

Fax No.: _____

Name and Title (Please Type or Print)

E-mail Address: _____

*

Exact Legal Name of Company (Offeror)

*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

BID PRICE

The following bid price shall be the all-inclusive price and include, but not be limited to, i.e., all labor, materials, equipment, ground transportation, lodging, taxes, and other costs for providing the goods and services required in IFB-10-001-SW:

\$ _____

Offeror: _____
(Name of Company)

INSURANCE

Insurance coverage is carried by: (where applicable)

Commercial General Liability: _____ Policy No. _____

Automobile Liability: _____ Policy No. _____

Worker's Compensation: _____ Policy No. _____

Unemployment Insurance: State of Hawaii Labor No.: _____

Temporary Disability Insurance: _____ Policy No. _____

Prepaid Health Carrier: _____

Offeror: _____
(Name of Company)

SUBCONTRACTORS

Are subcontractors to be used: Yes* _____ No _____

If more than one contractor is used, please have a sheet for each contractor.

*Bidder shall submit information as required by the General Condition, "Subcontracts and Assignments."

Company Name: _____

Business Address: _____

Telephone No.: _____ (Answering Service Is Not Acceptable)

Contractor's Representative: _____

Insurance coverage is carried by: (where applicable)

Commercial General Liability: _____ Policy No. _____

Automobile Liability: _____ Policy No. _____

Worker's Compensation: _____ Policy No. _____

Unemployment Insurance: State of Hawaii Labor No.: _____

Temporary Disability Insurance: _____ Policy No. _____

Prepaid Health Carrier: _____

Offeror: _____
(Name of Company)

**WAGE CERTIFICATE
FOR SERVICE CONTRACTS**

Subject: IFB No.: _____

Title of IFB: _____

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and
2. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by section 103-55, HRS.

Offeror _____

Signature _____

Title _____

Date _____

SPECIFICATIONS

OVERVIEW

The State is issuing this IFB to obtain bids for the provision of a New System, that complies with all applicable state and federal laws, to collect, tabulate and report votes for the 2010 Special Election being held as a result of a vacancy in the U.S. House of Representatives for Congressional District I. The vacancy will occur after February 28, 2010, which is when the Congressman for Congressional District I will be resigning.

The contractor shall provide a leased integrated voting and vote counting system (herein "voting system") for a vote by mail Special Election that includes hardware, software, firmware, and equipment that has been tested and certified by an Independent Testing Authority.

The services and products shall include installation of the voting system and equipment at a location in Honolulu Hawaii. The voting system shall include Help America Vote Act compliant voting devices. Direct recording electronic voting devices with voter verifiable paper audit trails shall be provided at one (1) early voting site. In addition, the vendor will provide all translation services and translated audio recordings required for use with the direct recording electronic voting machines. The contractor shall also coordinate the production of ballots, vote by mail envelopes, and mailing services.

Pursuant to HRS § 17-2 the Chief Election Officer shall issue a proclamation for the Special Election and the election can take place no earlier than 60 days from the proclamation. The Chief Election Officer plans to issue the proclamation in March 2010 and the election will be held in May 2010. It is expected that the proclamation will designate May 22, 2010 (Saturday) as the day of the election. A variety of issues related to funding, logistical, and legal matters may impact that date. As such, the vendor must be able to provide said services in accordance with whatever date is selected by the Chief Election Officer in the proclamation.

GENERAL

Full Service Specifications – The contractor shall provide all the necessary hardware, software, firmware, equipment, supplies and consultant services for the Special Election as described herein. The contractor may utilize used equipment provided that it is in good and usable condition.

The contractor agrees that all hardware, software, equipment, and supplies shall remain in the State of Hawaii throughout the election contest period as defined by Hawaii Revised Statutes (HRS) Chapter 11. All electronic media storage devices utilized in the election shall remain in the custody of the State for the duration of this Contract and shall be returned to the contractor at a time mutually agreed upon in writing in good condition and repair, ordinary wear and tear excepted, but not earlier than twenty two (22) months after the election. All hardware and equipment is leased to the State for the duration of the Contract, and not sold. Software and firmware is licensed to the State for the duration of the Contract, and not sold.

The contractor shall deliver and store all hardware, software, firmware, equipment and supplies for the Special Election to a suitable, secured location to be provided by the State in the City and County of Honolulu. The contractor shall have access to such location as necessary for the performance of services hereunder.

The contractor shall conduct on-site acceptance testing of all hardware, software, firmware, equipment and supplies to ensure that all items are received in satisfactory condition.

The contractor shall create, program, and test the election definition for the Special Election.

The contractor shall provide the State with the three (3) types of vote-by-mail envelopes (mailing, return, and secret ballot) in accordance with specifications herein for mailing a vote-by-mail packet to each registered voter in the Special Election.

The contractor shall arrange and coordinate the vote-by-mail packet assembly and mailing services according to the specifications herein. The vote-by-mail packets shall be mailed at the first class postal rate. Postage is not included as part of this solicitation and shall be borne by the State.

Technical and Operational Support – The contractor shall provide comprehensive on-site technical and operational support prior to, on, and after Election Day for acceptance testing, preventive maintenance, logic and accuracy tests, volume tests, official observers tests, operation of scanners and accumulation system, training and debriefings as agreed upon in writing by the contractor and the State.

The contractor shall provide onsite training for Office of Elections' staff to operate any voting equipment/devices used in conjunction with walk in (early voting).

Upon written request, the contractor shall provide the State with on-site technical and operational consultant support services after the election in the event of an election challenge, contest or inquiry.

Upon written request, the contractor shall provide the State with all hardware, software, firmware, equipment and supplies to support any election challenge, contest or inquiry.

ENVELOPE PRODUCTION SPECIFICATIONS

SERVICES:	Vote by Mail Envelopes, three (3) types.
BID OBJECTIVE:	Manufacture and printing of voting envelopes for the State of Hawaii.
ESTIMATED QUANTITY OF EACH TYPE:	350,000
SIZE:	Secret Ballot Envelope Posi-check 3.875" x 8.875" Return envelope standard #10, 4.125" x 9.5" Forwarding envelope #11 standard window mailing envelope 4.5" x 10.375" automation compatible
PAPER:	Posi-check Secret Ballot Envelope shall be on yellow paper stock. Other envelopes shall be on white paper stock
INK:	BLACK
PRINTING/FORMAT:	State to provide artwork in .pdf format. All imaged and/or imprinted text must be original. The business reply return envelope shall be cut with a circular die in a consistent location of the envelope. Up to 1/2 inch acceptable.
SUBCONTRACTING:	The State authorizes the contractor to subcontract envelope production. The subcontracting shall not, under any circumstances relieve the contractor of its obligations and liability. The State shall deal solely with the contractor on all envelope production matters.
DELIVERY:	Envelopes shall be shipped to the vendor's location on the island of Oahu and delivered to a location in the City and County of Honolulu at a date/time specified by the Office of Elections.
PACKING:	Envelopes shall be packed in such manner that they will not be damaged during shipment.

MAILING SERVICE SPECIFICATIONS

SERVICES:	Mailing Services for Vote by Mail Ballot Packets
ESTIMATED QUANTITY:	350,000 mail pieces
INPUT DATA:	<p>The City and County of Honolulu Department of Information Technology will provide for the loan of data on compact disk one (1) format for the duration of the contract. The Contractor shall return the CDROM after completion of each job.</p> <p>Data for the mailings will be available on 55 days prior to election.</p> <p>The data file will contain the information on the record content sheet attached hereto as Exhibit 1.</p>
PERSONALIZATION:	Pieces must reflect only data elements unique to each registered voter. The format for data imaging shall be substantially similar to the sample attached hereto as Exhibit 2.
FOLDING OF BALLOTS:	The 8.5"x 11" ballots shall tri-folded.
INSERTION OF CONTENTS:	Only automated insertion processes will be accepted. Automation equipment must employ double document detection to ensure that multiple ballots are not erroneously inserted. There will be 99 ballots styles that shall be assembled/inserted in batches into the appropriately addressed envelopes.
DISTRIBUTION:	<p>Mailpieces must be distributed directly from the contractor's facility into the USPS postal stream. Mailpieces may be inserted into postal stream in batches as completed.</p> <p>Vote by mail ballots will be mailed at the full first class rate. Sortation and zip code correction for addresses data is not required. The contractor must have an onsite mail piece design and quality control specialist.</p> <p>The contractor must provide reports showing a complete list of all records mailed and any other report the State determine necessary as proof of processing all records contained in the data provided.</p> <p>The State shall be responsible for establishing a first class mail permit account and ensuring that sufficient postal funds are available for mailing of the Vote by Mail ballots.</p>

The contractor shall be responsible for providing the State with the original Postal Service System mailing documents.

DELIVERY:

Should there be any remaining materials after the contract has been terminated, the materials should be delivered to the Office of Elections, 802 Lehua Avenue, Pearl City, Hawaii 96782, at no additional cost to the Office of Elections.

QUALITY CONTROL:

The contractor must have a definable quality control program in effect including procedures at the production floor level. The contractor shall return any ballots that become damaged in the inserting/mailling process.

SUBCONTRACTING:

The State authorizes contractor to subcontract mailing services. The subcontracting shall not, under any circumstances relieve the contractor of its obligations and liability. The State shall deal solely with the contractor on all mailing matters.

MAILING DEADLINES:

Time is of the essence and the entire mailing must be completed by the deadline. The contractor shall meet all production and delivery deadlines to ensure that the vote-by-mail packets are inserted into the postal stream at least twenty days prior to the election or earlier as mutually agreed upon.

Ballots associated with voters covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), will be mailed out at least 35 days prior to the election or at a mutually agreed upon time.

If it becomes apparent in the State's judgment that the contractor will not be able to satisfactorily complete the job to ensure the timely delivery of materials to voters, the State reserves the right to engage the services of another vendor to perform the specified services.

BALLOT PRODUCTION SPECIFICATIONS

PRODUCT:	Ballot Production
SIZE:	The ballots shall be of a size sufficient for purposes of administering the special election. The ballot will not include a removable ballot stub.
QUANTITY:	<p>Production Ballots: 350,000 total Test Ballots: 50 of each ballot type Duplication Ballots: 50 of each ballot type</p> <p>Demonstration Ballots: The contractor shall provide a portable document format (.pdf) file of a demonstration ballot that is coded so that reproduced copies may not be read by the voting system.</p> <p>Facsimile Ballots: The contractor shall provide a portable document format (.pdf) file of facsimile translated ballots that is coded so that reproduced copies may not be read by the voting system. The facsimile ballots will be printed in English and other required languages (currently Chinese, Ilocano, and Japanese) under the Language Minority Provision of the Voting Rights Act.</p> <p>There will be a total of 99 ballot types.</p>
BALLOT LAYOUT:	<p>The State shall be responsible for providing the contractor with correct candidate information. The contractor shall be responsible for producing all camera-ready or electronic artwork and for ensuring that all work is correct (contests, candidates, order, and codes) and ballots compatible with its voting system and equipment.</p> <p>The State shall provide final ballot language to the contractor no later than 50 days prior to the election. In addition, the State will provide the mailing address file import to contractor no later than 55 days prior to the election.</p> <p>The contractor shall be responsible for ensuring that all artwork is correct and that the ballots are printed as directed by the State.</p>
TEST BALLOTS:	The contractor shall provide the State with all ballots including test ballots and duplication ballots for the Special Election.
SUBCONTRACTING:	The State authorizes the contractor to subcontract ballot production. The subcontracting shall not, under any circumstances relieve the contractor of its obligations and liability. The State shall deal solely with the contractor on all
SPECIFICATIONS	

printing matters.

INVENTORY CONTROL:

The contractor shall provide for the security of the ballots until the ballots are delivered to the State and shall ensure that only authorized individuals shall have access to the ballots or related ballot materials.

The contractor shall provide the State with a summary of the ballots produced for the Special Election which includes the following information:

number of files and artwork (if any);
number of vote-by-mail ballots; and
number of observer test ballots.

The contractor shall ensure that all materials and documents such as camera-ready artwork, proofs, negatives, glossies, and electronic files, produced for the Special Election are retained for the period of the contract. The contractor shall be responsible for the security of these materials and shall ensure that they are accessed only by authorized personnel of the contractor and authorized representatives of the State.

The contractor shall ensure that all materials and documents, such as waste copies, dummy forms, spoiled or specimen ballots are properly destroyed and shall certify such destruction in writing to the State.

PACKING:

The contractor shall ensure that in packaging and packing the ballots for delivery, the ballots are protected from any damage due to climate or weather conditions and the general hazards encountered in transportation and handling.

The contractor shall identify and certify in writing to the State all ballots that have been printed and shipped to the State. A letter of certification shall be included with a duplicate packing slip and delivered to the State one (1) day prior to shipment of the ballots from the contractor's production site.

VOTING SYSTEM SPECIFICATIONS FOR MAIL BALLOTS

GENERAL:	The voting system shall comply with Hawaii Revised Statutes (HRS), Chapters 11 and 16, "ELECTIONS, GENERALLY" and "VOTING SYSTEMS," and Hawaii Administrative Rules (HAR), Chapters 3-171 through 3-176. The voting shall also comply with all applicable federal laws, such as the Help America Vote Act (HAVA) and the Voting Rights Act, and must be certified by an Independent Testing Authority.
READ TECHNOLOGY:	The voting system shall have the ability to capture ballot images.
TABULATION REQUIREMENTS:	<p>The voting system must provide counts at the precinct and state level for the following:</p> <ul style="list-style-type: none">• Ballots Cast• Votes Cast• Blank Votes• Over Votes
QUANTITY:	The voting system must be capable of processing a total of 200,000 ballots in a 24 hour period. The voting system must also have an automatic ballot feeder.
BACKUP POWER:	The voting system must have backup power in the event of a power outage.
SYSTEM SECURITY REQUIREMENTS:	The integrity of the voting system is of the highest concern to the State and must provide accurate and honest elections. Therefore, the voting system requires stringent measures to ensure confidentiality, security, control, backup and recovery, and audit ability of the system functions and election data.

VOTING SYSTEM REQUIREMENTS ABSENTEE WALK

GENERAL:	The voting system shall be accessible and comply with Hawaii Revised Statutes (HRS), Chapters 11 and 16, "ELECTIONS, GENERALLY" and "VOTING SYSTEMS," and Hawaii Administrative Rules (HAR), Chapters 3-171 through 3-176. The voting shall also comply with all applicable federal laws, such as the Help America Vote Act (HAVA) and the Voting Rights Act, and must be certified by an Independent Testing Authority. Specifically, the voting system in the absentee walk site will include Direct Recording Electronic voting devices with voter verifiable paper audit trails.
COVERED LANGUAGES:	Chinese (Cantonese) Filipino (Ilocano) Japanese
QUANTITY:	12 Direct Recording Electronic voting devices with voter verifiable paper audit trails and booths (if necessary).
ACCESSIBILITY OPTIONS:	The voting system shall include headphones, and tactile switches to facilitate accessible voting.
DELIVERY:	The voting system shall be delivered and setup at a location to be determined by the State.

ELECTION RESULTS SPECIFICATIONS

PRODUCT:	Summary Report and Precinct Report
DESCRIPTION:	<p>The Summary Report consists of election results for all precincts and districts.</p> <p>The Precinct Report is similar to the Summary Report except the turnout and registration totals are printed by precinct.</p>
MEDIUM:	8 1/2" by 11" Paper; portrait, three columns per page
FREQUENCY OF PRINTING:	<p>The summary report will be printed prior to Election Day ("Zero" Report) and after all ballots are processed on Election Day.</p> <p>The Precinct Report shall be printed after all ballots are processed on Election Day.</p>
INK:	BLACK
CONTENTS:	<p>The Summary Report shall contain the following information:</p> <ul style="list-style-type: none">• Title of Election (i.e., Special Election)• Name of Jurisdiction (i.e., State of Hawaii)• Title of Report (i.e., Summary Report or Final Report)• Scope of Report (i.e., Statewide)• Date of Election• Date and Time of Report Printing• Total Number of Precincts per Contest• Total Number of Precincts Processed at the time of printing report• Percent of Total Number of Precincts Processed at the time of Printing per Contest• Total Number of Registered Voters• Total Turnout• Percent of Total Turnout• Contest Description• Candidate Names• Candidate Vote Totals• Percent of Candidate Vote Totals per contest (Candidate Vote Totals per Contest divided by total votes cast for that contest plus Blank Vote Totals per contest plus Over Vote Totals per contest)• Blank Vote Totals per Contest• Percent of Blank Vote Totals• Over Vote Totals per contest (Number of ballots with more candidates voted for in that contest than the

- number of seats available)
- Percent of Over Vote Totals per Contest
- Overseas Turnout

The Precinct Report shall contain the following information:

- Title of Election (i.e., Special Election)
- Name of Jurisdiction (i.e., State of Hawaii)
- Title of Report (i.e., Summary Report or Final Report)
- Scope of Report (i.e., Precinct Report)
- Date of Election
- Date and Time of Report Printing
- Precinct Name and District Precinct Number
- Total Number of Registered Voters in the precinct
- Total Turnout
- Percent of Total Turnout
- Contest Description
- Candidate Names
- Candidate Vote Totals
- Percent of Candidate Vote Totals per contest
(Candidate Vote Totals per Contest divided by total votes cast for that contest plus Blank Vote Totals per contest plus Over Vote Totals per contest)
- Blank Vote Totals per Contest
- Percent of Blank Vote Totals
- Over Vote Totals per contest (Number of ballots with more candidates voted for in that contest than the number of seats available)

SPECIAL CONDITIONS

1. AUTHORITY

This IFB is issued under the provisions of the State procurement Code (HRS Chapter 103D) and the State Procurement Office's applicable Directives, Circular, and administrative rules. All prospective Offerors are charged with presumptive knowledge of all applicable legal authorities. Submission of a valid executed offer by an any prospective Offeror shall constitute admission of such knowledge on the part of such prospective Offeror.

2. PROCUREMENT OFFICER

The Procurement Officer is Mr. Aaron H. Schulaner. All questions regarding this procurement should be directed to him.

3. CONTRACT ADMINISTRATOR

For the purpose of this contract, Chief Election Officer Scott T. Nago, or his designee, is the Contract Administrator.

4. TERM OF CONTRACT

The term of the contract shall be from the date on the Notice to Proceed to the conclusion of any legal challenge that may be filed regarding the results of the Special Election.

As previously indicated, the vacancy will occur after February 28, 2010, which is when the Congressman for Congressional District I will be resigning. Pursuant to HRS § 17-2 the Chief Election Officer shall issue a proclamation for the Special Election and the election can take place no earlier than 60 days from the proclamation. The Chief Election Officer plans to issue the proclamation in March 2010 and the election will be held in May 2010. It is expected that the proclamation will designate May 22, 2010 (Saturday) as the day of the election. A variety of issues related to funding, logistical, and legal matters may impact that date. As such, the vendor must be able to provide said services in accordance with whatever date is selected by the Chief Election Officer in the proclamation. The Notice to Proceed will be issued in close proximity to the issuance of the proclamation.

5. OFFEROR QUALIFICATION

In order to be considered for award of this IFB, the Offeror must provide with its offer documentation satisfactory to the State that the Offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For example, the documentation should include the following: (1) the quantity and model of voting machines for counting absentee mail ballots; (2) the model of DRE with VVPAT to be used in the absentee walk-in site; (3) three professional references; and (4) an overview of how the Offeror plans to meet the specifications.

The State may seek additional information from the Offeror to the extent necessary to confirm that the Offeror is able to satisfactorily furnish the services being solicited. As time is of the essence, if the lowest bidder does not in a timely manner establish, in the State's sole opinion, that it can satisfactorily furnish the services being solicited, the State may award the contract to the next lowest bidder or may publish another call for tenders.

6. RESPONSIBILITY OF OFFERORS

Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of HRS § 103D-310(c):

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers' compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. One of the following:
 - a. Be registered and incorporated or organized under the laws of the State (hereinafter referred to as a "Hawaii business"); **or**
 - b. Be registered to do business in the State (hereinafter referred to as a "compliant non-Hawaii business").

The Offeror if awarded a Contract pursuant to this IFB, shall comply with all laws governing entities doing business in the State. The Offeror shall obtain and provide to the State:

Responsibility of Lowest Responsive Offeror. Reference HRS § 103D-310(c). If compliance documents have not been submitted prior to award, the lowest responsive offeror shall produce documents to the procurement officer to demonstrate compliance with this section.

HRS Chapter 237 tax clearance requirement for award and final payment. Instructions are as follows:

Pursuant to §103D-328, HRS, lowest responsive offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX *TAX CLEARANCE APPLICATION* Form A-6 (Rev. 2003) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): http://www.state.hi.us/tax/a1_1alphalist.htm

DOTAX Forms by Fax/Mail: (808) 587-7572
1-800-222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX: (808) 587-1488
IRS: (808) 539-1573

The application for the clearance is the responsibility of the Offeror, and must be submitted directly to the DOTAX or IRS and not to the purchasing agency. However, the tax clearance certificate shall be submitted to the address as required.

Contractor is required to submit a tax clearance certificate for final payment on the contract. A

tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award.

Instructions are as follows:

Pursuant to §103D-310(c), HRS, the lowest responsive offeror shall be required to submit an approved certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the purchasing agency. A photocopy of the certificate is acceptable.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR*, Form LIR#27 which is available at <http://hawaii.gov/labor/formsall.shtml>, or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the purchasing agency.

The application for the certificate is the responsibility of the offeror, and must be submitted directly to the DLIR and not to the purchasing agency.

Compliance with Section 103D-310(c)(1) and (2), HRS. The lowest responsive Offeror shall be required to submit a *CERTIFICATE OF GOOD STANDING* (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from date of issue and must be valid on the date it is received by the purchasing agency.

To obtain the Certificate, the Offeror must first be registered with the BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the Certificate.

On-line business registration and the Certificate are available at www.BusinessRegistrations.com. To register or to obtain the Certificate by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

Final Payment Requirements. Contractor is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to a tax clearance certificate an original "Certification of Compliance for Final Payment" (SPO Form-22), attached, will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from under the "Quick Links" menu at the right of the webpage.

Hawaii Compliance Express. Alternatively, instead of separately applying at the various state agencies for these certificates identified above, Offerors may choose to use the Hawaii Compliance Express (HCE) that allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of Chapter 103D-310(c), HRS, shall be accepted for both contracting purposes and final payment. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$12.00 to the Hawaii Information Consortium, LLC (HIC). Vendors choosing not to participate in the HCE program will be required to provide the paper certificates as instructed in the sections previous to this one.

Timely Submission of all Certificates. The above certificates should be applied for and submitted to the purchasing agency as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

7. OFFER PREPARATION

Offer Submittal. To submit an offer, the Offeror must: (1) complete the Offer Form attached to this IFB in accordance with the terms and conditions set forth in the IFB, (2) sign the Offer Form in ink with an original signature; (3) provide any additional documentation sought in the Special Provisions paragraphs regarding Offeror Qualifications and Responsibility of Offerors; (4) place said items in an envelope clearly identified with the IFB number, Title, and Offeror's name on the outside of the envelope; (5) seal the envelope; and (6) submit the sealed envelope containing the original and copies of the offer to the Office of Elections, Attn: Procurement Officer, 802 Lehua Avenue, Pearl City, Hawaii, 96782.

Offers received after the due date and time will be rejected and returned unopened. Timely receipt of proposals shall be stamped with the date and time registered by the time stamp clock to evidence timely receipt. Offeror accepts all risks associated with the delivery of their proposals, including but not limited to, incorrect delivery or failure to deliver proposals before the deadline by any courier, mail, or other delivery service, including the U.S. Postal Service. In all cases by filing an offer, each Offeror agrees its offer filed after the Proposals Due date and time will be rejected and the State has no liability of any nature whatsoever for any offer delivered after the due date and time.

Legal Name. Offers shall be submitted using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable;. An Offeror shall indicate its exact legal name in the appropriate space on Offer Form. The authorized signature on the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

Offer Price. The offer price shall be the all-inclusive price and include, but not be limited to, i.e., all labor, materials, equipment, ground transportation, lodging, taxes, and other costs for providing the services herein.

Acceptance of offer, if any, shall be made within ninety (90) calendar days after the opening of offers, and the prices quoted by the Offeror shall remain firm for the (90) day period or longer as mutually agreed upon by the Offeror and the State.

Confidential Information. Offerors shall designate those portions of their offers that contain trade secrets or other proprietary data that are to remain confidential subject to Hawaii Administrative Rules (HAR) §§ 3-122-21(a)(7) and 3-122-30(c) and (d). Material designated as confidential shall be readily separable from the offer in order to facilitate inspection of the non-confidential portion of the offer. Prices, makes and models, or catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of opening regardless of any designation to the contrary.

If a request is made to inspect the confidential material, the inspection shall be subject to written determination by the Office of the Attorney General in accordance with chapter 92F, HRS. If it is determined that the material designated as confidential is subject to disclosure, the material shall be open to public inspection, unless the Offeror protests under chapter 3-126, HAR. If the request to inspect the confidential material is denied, the decision may be appealed to the Office of Information Practices in accordance with §92F-15.5, HRS.

8. METHOD OF AWARD

An award, if made, shall be to the responsive and responsible Offeror submitting the lowest Price on the Offer Form.

Only those offers that meet all of the IFB's Specifications, Special Provisions, and General Conditions (Exhibit 3), and any other IFB requirements(s) will be considered for award. Any offer that proposes terms, conditions, or requirements that are contrary to those specified herein or does not meet the qualifications requirements of the IFB, as solely determined by the State and as provided for herein, may be considered non-responsive and will be rejected as provided for herein.

9. EXECUTION OF CONTRACT

The successful Offeror shall be required to execute a contract based substantially on the State Agreement for Goods or Services Based Upon Competitive Sealed Bids, AG-003 Rev. 11/15/2005, included by reference in the IFB. No performance or payment bond is required for this Contract.

No work is to be undertaken by the Contractor prior to the receipt of a fully executed Contract. To the extent, the Contract or Notice of Award indicates a later fixed date or a date to be determined in a Notice to Proceed, the Contractor will not undertake work before that time.

The State is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to that time.

10. INVOICING AND PAYMENT

The Contractor shall submit an original and three (3) copies of invoices to the Office of Elections, Attn: Election Support Services Section, 802 Lehua Avenue, Pearl City Hawaii 96782. Payment shall be made to the Contractor at the contracted price and upon the term of the IFB

upon certification that the Contractor has satisfactorily delivered the goods or performance of services being invoiced.

HRS chapters 103 and 103D provide that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods or performance of the services, to make payment. For this reason the State shall reject any offer submitted with a condition requiring payment within a shorter period. Further the State will reject any offer submitted with a condition requiring interests payments greater than that allowed by applicable State law.

11. RE-EXECUTION OF WORK

The Contractor shall immediately re-execute any work that fails to confirm to contract requirements as determined by the State and shall immediately remedy any defects due to faulty or unacceptable service by the Contractor.

12. LIABILITY INSURANCE

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or by a subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the Contractor providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, Contractor may require subcontractor to provide its own insurance which meets the requirements herein. It is understood that a subcontractor's insurance policy or policies are in addition to the Contractor's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor, including its subcontractor(s) where appropriate.

<u>Coverages</u>	<u>Limits</u>
Commercial General Liability (Occurrence Form)	\$1,000,000 per occurrence and \$2,000,000 in the aggregate (the maximum amount paid for claims during the policy term)
Comprehensive Automobile Liability	\$1,000,000 per accident

Each insurance policy required by this contract, including a subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Office of Elections, 802 Lehua Avenue, Pearl City, Hawaii 96782."
2. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements.

Upon Contractor's execution of the contract, the Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) there on deposit with the State during the entire term of this contract, including those of its subcontractor(s) where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default under this contract, entitling the State to exercise any or all of the remedies provided in this contract for a default of the Contractor.

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder or to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

13. LIQUIDATED DAMAGES

It is mutually understood and agreed by and between the parties to the contract that time is of the essence and that in cases of failure on the part of the Contractor to complete the services within the timeframe specified herein, the State will be damaged thereby. It is agreed that the Contractor shall pay the State liquidated damages as provided below. Liquidated damages may be deducted from any payments due or to become due to the Contractor.

The liquidated damages provisions, presume that all voters will be able to vote during polling hours on election day, and that all ballots will be properly counted by the end of the election day. As such, matters relating to voting machines not counting ballots properly, polling hours having to be extended due to machine problems, lack of ballots for voters to vote on, problems discovered after the close of polls, and other matters relating to voters not being able to vote during polling hours or the miscounting of ballots shall not be covered by these liquidated damages provisions. Instead, separate damages may be assessed for such breaches of the contract and depending on the circumstances, these breaches may serve as evidence of default on behalf of the Contractor.

The Offeror agrees to the following liquidated damages:

1.1. Inadequate Support Staff

The Offeror shall provide adequate support staff (at the State's sole discretion) before, on, and after election days. Failure to provide adequate support staff by the date specified in the Final implementation Plan shall result in damages of \$300.00 per day.

1.2. Failure of Ballot Counters Used in the Absentee Walk-In Site (marksense technology)

Failure to repair or replace a non-functioning ballot counter, during the operation of the absentee walk sites, within 30 minutes shall result in damages equivalent to the unit cost of the ballot counter.

1.3. Failure of Vote Recorder Used in the Absentee Walk-In Site (DRE technology)

Failure to repair or replace a non-functioning vote recorder, used in the absentee walk-in site, within 30 minutes during the absentee walk-in voting period and on election days, respectively shall result in damages equivalent to the unit cost of the vote recorder.

1.4. Ballot Counters Used in the Central Vote Count System Environment (marksense technology)

Failure to repair or replace a non-functioning ballot counter, used in the central vote count system environment, within 30 minutes on days in which ballots are being counted shall result in damages equivalent to the unit cost of the ballot counter used in the central vote count system environment.

1.5. Ancillary Services - Hardware and Software Components

Failure to repair or replace a non-functioning Ancillary Service hardware or software component within 30 minutes on days in which ballots are being counted or during the operation of the absentee walk sites shall result in damages equivalent to \$100.00 or the unit cost of the Ancillary Service, hardware, or software component whichever is greater.

1.6. Ballots

1.6.1. Late Delivery

Failure to deliver ballots by the dates specified in the Final Implementation Plan and Schedule shall result in damages of \$1,000.00 per day that the ballots are late.

1.6.2. Incorrectly Printed Ballots

An incorrectly printed ballot is any ballot that:

- Contains an incorrect contest, candidate, measure, county designation, footprint or ballot code;
- Is missing a contest, candidate, measure, county designation, footprint, or

ballot code;

- Contains any other incorrect information; and
- Contains a printing/production defect.

1.6.3. Incorrectly printed ballots discovered before election day shall result in damages of \$500.00 per ballot found.

1.6.4. Incorrectly printed ballots discovered on election day shall result in damages of \$1,000.00 per ballot found.

1.6.5. Liquidated damages for incorrectly printed ballots shall not exceed \$20,000 per polling place for ballots intended for absentee walk in polling places, and \$20,000 per ballot type for ballots intended for absentee mail voting.

1.7. Election Reports (Results)

Failure to provide the State with correct and accurate election reports (results) on election day shall result in damages of \$500.00 per day.

1.8. Election Definition Verification Reports

Failure to provide the State with election definition verification reports upon completion of programming the election definition or by the dates specified in the Final Implementation Plan and Schedule shall result in damages of \$500.00 per day.

1.9. Other

Failure to comply with the Final Implementation Plan and Schedule shall result in damages of \$500.00 per day per delinquent items or tasks excluding items 1.6 - 1.8.

14. REMOVAL OF CONTRACTOR'S EMPLOYEES

The Contractor agrees to remove employees from services rendered and to be rendered to the State upon written request from the State.

15. NO MULTIPLE OR ALTERNATE OFFERS

Multiple or alternate offers from the same Offeror will not be accepted. An Offeror may submit only one offer in response to a solicitation. If an Offeror submits more than one offer in response to a solicitation, than all such offers shall be rejected.

16. PROTEST

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing before the date set for receipt of proposals. Protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

The notice of award letter(s), if any, resulting from this solicitation shall be issued to the

successful Offeror(s), and posted on the Procurement Reporting System.

Any protest pursuant to §103D-701, HRS, and Sections 3-126-3 and 3-126-4, HAR, shall be submitted in writing to the Office of Elections, Attn: Procurement Officer, 802 Lehua Avenue, Pearl City, Hawaii 96782. Protests may only be received on work days between 7:45 a.m. to 4:30 p.m. Any protest received after 4:30 p.m. will be treated as having been submitted the following work day. FACSIMILE PROTESTS WILL NOT BE ACCEPTED OR CONSIDERED.

FILE CONTENTS

SYSTEM

VRABLT3

ORIG
DATE

/

REV
DATE

/

SECT. 3, PAGE

1

FILE NAME:

ABSENTEE DOWNLOAD FOR VENDOR

RECORD SIZE

HOW PROTECTED:

ITEM NO.	STARTING BYTE	DESCRIPTION	FIELD SIZE	TYPE CHAR	M/O	FIELD FORMAT/COMMENT
1	1	Voter Identification No.	10	A		
2	11	APPNO	7	A		
3	18	NAME	28	A		
4	46	RESIDENCE ADDR	28	A		
5	74	MAILING NAME	40	A		
6	114	MAILING ADDR1	35	A		
7	149	MAILING ADDR2	35	A		
8	184	MAILING ADDR3	35	A		
9	219	MAILING ADDR4	35	A		
10	254	HOLD	1	A		
11	255	TYPE	1	A		
12	256	DIST	2	A		
13	258	PRECINCT	2	A		
14	260	REG	1	A		
15	261	OHA	1	A		
16	262	LOC	1	A		
17	263	LANG	2	A		
18	265	QUES	4	A		
19	269	BALTYP	3	A		
20	272	MMDD	4	A		
21	276	ELEC	1	A		

If you do not sign, your ballot will not be counted! Ballots must be received before 6 p.m. Election Day to be counted.

Foreign Air Mail Postage Must Be Affixed if Mailed in a Foreign Postal Facility.

POSTAL CLERK:

Deliver to address on other side

Sign Here

**ENCLOSE SECRET BALLOT ENVELOPE
BEFORE SEALING**

Affirmation Statement

I hereby affirm: that I am a resident and registered voter of the precinct and representative district as indicated on the left and am entitled to vote in the election.

Signature (required)

If voter uses a "mark" as a signature, a witness must sign here.
Witnessed by:

Witness Signature only

Address Phone

0702

07062221110565040 DIST: 20 PREC: 05 P 038
3324 SIERRA DR, 406
PO BOX 88727
HONOLULU HI 96830-8727

GENERAL CONDITIONS

Table of Contents

	<u>Page(s)</u>
1. Coordination of Services by the STATE.....	2
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3. Personnel Requirements.....	3
4. Nondiscrimination.....	3
5. Conflicts of Interest.....	3
6. Subcontracts and Assignments.....	3
7. Indemnification and Defense	4
8. Cost of Litigation	4
9. Liquidated Damages.....	4
10. STATE'S Right of Offset	4
11. Disputes	4
12. Suspension of Contract	4
13. Termination for Default	5
14. Termination for Convenience.....	6
15. Claims Based on the Agency Procurement Officer's Actions or Omissions	8
16. Costs and Expenses.....	8
17. Payment Procedures; Final Payment; Tax Clearance	9
18. Federal Funds.....	9
19. Modifications of Contract	9
20. Change Order.....	10
21. Price Adjustment.....	11
22. Variation in Quantity for Definite Quantity Contracts	11
23. Changes in Cost-Reimbursement Contract.....	11
24. Confidentiality of Material.....	12
25. Publicity	12
26. Ownership Rights and Copyright.....	12
27. Liens and Warranties.....	12
28. Audit of Books and Records of the CONTRACTOR	12
29. Cost or Pricing Data.....	13
30. Audit of Cost or Pricing Data.....	13
31. Records Retention.....	13
32. Antitrust Claims	13
33. Patented Articles.	13
34. Governing Law	13
35. Compliance with Laws.....	14
36. Conflict between General Conditions and Procurement Rules.....	14
37. Entire Contract.....	14
38. Severability	14
39. Waiver.....	14
40. Pollution Control.....	14
41. Campaign Contributions	14
42. Confidentiality of Personal Information	14

GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
- a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period

not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of

supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

- (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or

in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
 - a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

 - (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or
 - (3) Account number, credit or debit card number, access code, or password that would permit

access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.